CF 100 (9)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATISGARH)

W. P. NO. 1612 OF 2004

PETITIONER

Kanwal Singh Thakur, S/o Shri Pusau Ram, aged About 55 years, Permanent R/o Village - Loharidih PO. Piparchhedi, Gariaband, Director, Zila Sahakari Kendriya Bank Maryadit Distt. Raipur [Chhattisgarh]

VERSUS

RESPONDENTS

1. Registrar, Co-operative Societies, Chhattisgarh, Agricultural University Campus, Labhandi, Raipur

2. District Cooperative Central Bank Raipur through its Chief Executive Officer, G. E. Road, Raipur [CG]

3. Radhey Shyam Sharma S/o Shri Rameshwar Prasad Aged about 56 years, R/o Samta Colony, Raipur [CG]

4. Mahendra Bahadur Singh C/o Devendra Bahadur Singh, Phingeshwarbara, Near Chhattisgarh College, Raipur [Chhattisgarh]

5. Bhuvaneshwar Yadu, S/o Shri Shiv Lal Yadav, aged About 53 years, R/o Village Dhaurbhata, PO Sunardeori Tah.-Palari, Dist.Raipur [CG]

6. Dharam Das Mahilang, S/o Raruha Ram, aged about 56 Years, R/o Vill. & Post Jova District Mahasamund [CG]

7. Biselal Sahu S/o Kunjlal Sahu R/o Vill. Bhorsi Block Development Fingeshwer Tahsil. Fingeshwer Distic. Raipur C.G.

13/5/04 Bilaspur

05/5/04

P. R. No. 1336/04
Presented by Shri Rajpal Singh
dated 13.5.04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI. MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

(5)

AFR

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI A.K PATNAIK, CJ
& HON'BLE SHRI S.K AGNIHOTRI, J

WRIT PETITION NO. 1023 OF 2004

AND

WRIT PETITION NO.1612 OF 2004

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE MR. JUSTICE SATISH KUMAR AGNIHOTRI

I agree

Sd/-
Satish K. Agnihotri
Judge

Post it for: 25th June, 2005

Sd/-
Chief Justice

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri A.K. Patnaik, CJ**
& Hon'ble Shri S.K. Agnihotri, J.

WRIT PETITION NO. 1023 OF 2004

Mohammed Akbar

Versus

Registrar, Co-operative Societies, Chhattisgarh,
Agricultural University Campus, Labhandi, Raipur and others.

AND

WRIT PETITION NO.1612 OF 2004

Kanwal Singh Thakur

Versus

Registrar, Co-operative Societies, Chhattisgarh,
Agricultural University Campus, Labhandi, Raipur and others.

Present : Mr. Manindra Shrivastava, Sr. Advocate with Ms. Smitha Ghai, learned counsel for the petitioner.

Mr. Ravish Agrawal, learned Advocate General for the State of Chhattisgarh/respondent No.1.

Mr. S.C. Verma learned counsel counsel for respondent No.2.

Mr. R.N. Singh & Mr. P. Diwakar, Sr. Advocates with Mr. Sanjay K. Agrawal learned counsel for respondents 3, 4, 5 & 6.

Mr. Dinesh Tiwari learned counsel for respondent No.7.

ORDER
(Passed on 25th of June 2005)

The following Order of the Court was passed by

A.K. Patnaik, CJ:

In these two writ petitions under Articles 226/227 of the Constitution of India, the order dated 02/04/2004 passed by the Registrar, Co-operative

Societies, Chhattisgarh, Raipur in Review Case No.80-01/2004 has been challenged.

2. The facts relevant for the disposal of these two writ petitions briefly are that the District Co-operative Central Bank, Raipur/respondent No.2 (for short *"the Co-operative Bank"*) is a Co-operative Society registered under the Madhya Pradesh Co-operative Societies Act, 1960 which has renamed after its adaptation to the State of Chhattisgarh as the Chhattisgarh Co-operative Societies Act, 1960 (for short *"the Act"*). Respondents 2 to 6 who are delegates of their respective primary societies were elected as Directors of the Board of the Co-operative Bank. Respondents 3 and 4 were also the Chairman and Vice Chairman of the Co-operative Bank. Respondents 3, 4, 5 and 6 were also members of the Staff Sub Committee of the Co-operative Bank. There were serious allegations irregular appointments, promotions and other matters concerning the employees of the Co-operative Bank and after an enquiry into the allegations, the Joint Registrar, Co-operative Societies, Raipur by order dated 03/02/1999 directed the Board of Directors of the Co-operative Bank to take action for removal of respondents 3 to 6 from the Staff Sub Committee and from the post of Directors.

3. The said order date d03/02/1999 of the Joint Registrar was challenged in Revision No.394 of 1999 by the Staff Sub Committee as well as respondent No.3 in the name of the Co-operative Bank before Madhya Pradesh State Co-operative Tribunal (for short *"the Tribunal"*). By order dated 03/01/2000 the Tribunal held that there was no illegality or infirmity in the said order dated 03/02/1999 of the Joint Registrar, Co-operative Societies and dismissed the revision with the direction that the Joint Registrar shall forward a copy of the complaint and the copy of the report of the enquiry to the Board of Directors of the Co-operative Bank and the Board of Directors will take action under Section 53(1)(b) of the Act within thirty days from the receipt of the copy of the enquiry report and the copy of the complaint. But the Board of Directors of the Co-operative Bank by majority decision took the view that the appointments and the promotions were made in accordance with law and there was no irregularity in the said appointments and promotions.

4. The petitioners who did not support the decision by the majority filed an application before the Joint Registrar. Co-operative Societies to take appropriate action against respondents 3, 4, 5 and 6 and the Joint Registrar issued a show cause notice dated 22/03/2000 to respondents 3, 4, 5 and 6.

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The said show cause notice dated 22/03/2000 was challenged before the Tribunal in Revision Case No.93 of 1999 and by order dated 04/04/2000 the Tribunal quashed the show cause notice dated 22/03/2000 issued by the Joint Registrar, Co-operative Societies and directed that a fresh meeting of the Committee of the Co-operative Bank be convened according to law which shall be presided over by the Deputy Registrar, Co-operative Societies, Raipur and the respondents 3 to 6 shall be afforded full opportunity of hearing in such a meeting as required under Section 53-B(1) of the Act and in such meeting the charges against them shall be considered. Pursuant to the said order dated 04.04/2000 the Managing Committee of the Co-operative Bank in a meeting held on 08/05/2000 presided by the Deputy Registrar, Co-operative Societies, Raipur appears to have considered the charges and found the respondents No.3 to 6 as not guilty.

5. The Joint Registrar then issued another show cause notice dated 21/03/2001 under Section 53-B(2) of the Act. The said show cause notice dated 21/03/2001 was challenged by respondents 3 to 6 before the Tribunal in four revision-petitions namely Revision Nos.176/2001, 177/2001, 226/2001 and 227/2001 and by order dated 28/11/2001 the Tribunal dismissed the revision petitions with the observation that all the defences as are available to respondents 3,4,5 and 6 could be taken by them before the Joint Registrar in their reply and the Joint Registrar will afford an opportunity to them and pass orders. After lapse of about 11 months, respondent No.3 then filed a writ petition on 11/10/2002 numbered as Writ Petition No.2107 of 2002 challenging the said order dated 28/11/2001 passed by the Tribunal dismissing the revision Nos.176 of 2001, 177 of 2001, 226 of 2001 and 227 of 2001.

6. When the said Writ Petition No.2107 of 2002 was pending, the Joint Registrar passed orders on 22-10-2002 in exercise of power vested in her by the Registrar under Sub-section (2) of Section 53-B of the Act, removing the respondent No.3 from the Office of the Chairman as also the Director of the Co-operative Bank and also disqualified respondent No.3 from holding any post in the Co-operative Bank for a period of three years after finding the respondent No.3 guilty of the charges of illegal appointments and promotions. In the said order dated 22-10-2002, however, the Joint Registrar observed that she was not inclined to impose such rigorous punishment on respondents 4,5 and 6 and instead warned them to work with full application of mind and in accordance with law and the rules and directions.

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7. Thereafter, one Biselal Sahu filed a petition under Section 80-A of the Act before the Registrar, Co-operative Societies, against only the portion of the order dated 22/10/2002 of the Joint Registrar, Co-operative Societies by which she did not impose any punishment on respondents 4, 5 and 6 and in his order dated 25/11/2002 the Registrar, Co-operative Societies held that although the Joint Registrar found respondents 3 to 6 equally guilty of the charges she punished respondent No. 3 only. Accordingly, by the said order dated 25-11-2002, the Registrar removed also respondents 4, 5 and 6 from the post of Vice President and Directors of the Co-operative Bank and disqualified them from holding any post in the Co-operative Bank for a period of three years from the date of the orders.

8. Against the said order dated 25/11/2002 respondents 4,5 and 6 filed writ petition Nos. 2162 of 2002, 2731 of 2002 and 2147 of 2002 respectively before this Court. During the pendency of the writ petitions the Registrar, Co-operative Societies, registered a Review case No. 80-01/2004 and issued notice dated 01/04/2004 for suo motu review of the order dated 22/10/2002 passed by the Joint Registrar, Co-operative Societies, removing respondent No.3 as Chairman and Director of the Co-operative Bank. The said notice was served on the Chief Executive Officer of the Co-operative Bank but no notice was served on the petitioner. The review case was fixed for hearing to 02/04/2004 at 2.00 p.m. and orders were passed by the Registrar on 02/04/2004 setting aside the order dated 22/10/2002 passed by the Joint Registrar, Co-operative Societies, removing respondent No.3 from the posts of Chairman and Director of the Co-operative Bank restoring the position as existing before 22/10/2002.

9. The aforesaid order dated 02/04/2004 passed by the Registrar, Co-operative Societies affected the petitioners because after removal of respondent No.3 from the post of the Chairman and Director of the Co-operative Bank, the petitioner in Writ Petition No.1023 of 2004 had been elected as the Chairman of the Co-operative Bank in the meeting of the Board of Directors of the Co-operative Bank held on 07/04/2004 and similarly after the removal of respondent No.4 as the Vice Chairman of the Co-operative Bank, the petitioner in Writ Petition No.1612 of 2004 had been elected as one of the Vice Chairmen of the Co-operative Bank in the meeting of the Board of Directors of the Co-operative Bank held on 07/04/2004. Aggrieved the two petitioners have thus filed these writ petitioners praying for quashing the

aforesaid order dated 02/04/2004 as well as the entire proceedings in Review Case No.80-01 of 2004 before the Registrar, Co-operative Societies leading to the said order dated 02/04/2004 *(hereinafter referred to as "the impugned order").*

10. At the hearing Mr. Manindra Shrivastava learned counsel for the petitioner submitted that when the orders dated 22/10/2002 and 25/11/2002 were passed, no power of review was vested with the Registrar, Co-operative Societies and the power of review was vested in the Registrar, Co-operative Societies only in the year 2003 under Section 80 of the Chhattisgarh Co-operative Societies (Amendment) Act, 2003 but by 2003 when the said Amendment Act came into force the orders dated 22-10-2002 and 25-11-2002 had become final. He submitted that the said Section 80 conferring power of review on the Registrar, Co-operative Societies, cannot retrospectively apply to the orders of the Registrar which have become final and can only apply to the orders of the Registrar, Co-operative Societies, passed after the said Section 80 of the Act was introduced in the year 2003. In support of this submission he relied on the decision of the Supreme Court in **Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and another** reported in **AIR 1968 SC 1336** and the decision of the Madhya Pradesh High Court reported in **Govind Prasad Rameshwar Nath Agarwal Vs. State of Madhya Pradesh and others** reported in **1968 MPLJ 704** in which it has been held that orders which had become final cannot be affected by a subsequent amendment in the law unless there is a positive indication in the amending Act for giving retrospective operation to the amendment. He next submitted that the Second Proviso to Section 80 of the Act conferring power of review on the Registrar, CO-operative Societies, provided that no order will be varied amended or revised in the review unless notice has been given to the parties interested to appear and such interested parties have been heard. But the two petitioners who had been elected as Chairman and Vice Chairman of the Co-operative Bank and were interested parties, were not served with any notice to appear and were not heard before the impugned order dated 02/04/2004. He further submitted that the First Proviso to Section 80 of the Act would show that the power of the Registrar under Section 80 of the Act is limited to correcting mistakes and errors in his order which are apparent on the face of the record and does not extend to deciding issues which had already been decided by the Tribunal in a revision. He submitted that a reading of the order dated 02/04/2004 of the Registrar of the Co-operative Societies would show that the ground for reviewing the earlier order dated 25/11/2002 for removal of

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respondent No.3 is that since the Board of Directors of the Co-operative Bank in the meeting held on 08/05/2000 under the Chairmanship of the Deputy Registrar, Co-operative Societies, Raipur had already considered the charges against respondents 3 to 6 and had acquitted them and closed the case against them, there was no propriety in the Joint Registrar issuing yet another notice under Section 53-B (2) of the Act in passing the final order pursuant to the said show cause notice but this issue had already been decided against respondents 3 to 6 by the Tribunal in the order dated 28/11/2001, dismissing the revision Nos.176/2001, 177/2001, 226/2001 and 227/2001 filed by respondents 3 to 6 against the show cause notice dated 21/03/2001 issued by the Joint Registrar, Co-operative Societies, Raipur.

11. Mr. Ravish Agrawal, learned Advocate General, appearing for the State of Chhattisgarh/respondent No.1, on the other hand, submitted that Section 77 (16) of the Madhya Pradesh Co-operative Societies Act, 1960 provides that an order in appeal, revision or review passed under the Act by the Tribunal shall be final and conclusive, and thus the order dated 22/10/2002 passed by the Joint Registrar, Co-operative Societies removing respondent No.3 from the office of the Chairman as also the Director of the Co-operative Bank and disqualifying him from holding any post in the Co-operative Bank for a period of three years cannot be held to be final. He further argued that the said order dated 22/10/2002 passed by the Joint Registrar, Co-operative Societies was subject to challenge before the Tribunal under Section 77 of the Madhya Pradesh Co-operative Societies Act, 1960, but under Section 74 of the Madhya Pradesh Reorganisation Act, 2000 the jurisdiction of the Tribunal was to continue for a period of two years w.e.f. 01/11/2000 i.e. upto 01/11/2002 and for this reason the order dated 22/10/2002 passed by the Joint Registrar, Co-operative Societies, could not be challenged before the Tribunal even within the period of limitation of thirty days which expired on 22/11/2002. He vehemently argued that the contention of Mr. Shrivastava that the order passed by the Joint Registrar or the Registrar of the Co-operative Societies had become final and could not be reviewed by the Registrar by the impugned order dated 02/04/2004 is, therefore, without any merit. He submitted that Section 80 was brought to the Act by the Amendment Act of 2003 and at the time the impugned order dated 02/04/2004 was passed by the Registrar, Co-operative Societies, under Section 80 of the Act, the Registrar, Co-operative Societies had the power to review under the said Section 80 of the Act and there is nothing in the Act which expressly or impliedly provides

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that the Registrar, Co-operative Societies could not exercise the power of review in respect of an order which had been passed prior to the commencement of the Amendment Act of 2003. In support of this submission, he relied on the decision of the Supreme Court in **B.P. Andra Vs. Superintendent, Central Jail, Tihar** reported in **AIR 1975 SC 164**.

12. Mr. S.C. Verma, learned counsel for respondent No.2, submitted that respondent No.2/ Co-operative Bank had filed its return after receiving notice in the review case from the Registrar of the Co-operative Societies.

13. Mr. R.N. Singh learned counsel appearing for respondents 3., 4, 5 & 6 reiterated the submission of Mr. Ravish Agrawal, learned Advocate General that the orders 22/10/2002 and 25/11/2002 could be challenged before the Tribunal under Section 77 of the Act and therefore were not final. He further argued that the said orders could not be challenged before the Tribunal, as the Tribunal was not available by virtue of Section 74 of the Madhya Pradesh Reorganization Act, 2000. He submitted that the Registrar, Co-operative Societies, therefore, could review the said orders in exercise of his power under Section 80 of the Act as introduced by the Amendment Act of 2003. In reply to the contention of Mr. Shrivastava that no notice had been given to the petitioners and no hearing had been granted to them in terms of the Second Proviso to Section 80 of the Act before the impugned order dated 02/04/2004 was passed by the Registrar, Co-operative Societies, Mr. Singh submitted that under the Rules only notice was required to be given to the parties in the case in which the original order sought to be reviewed was passed and such a notice was served on the parties to the case in which the order dated 25/11/2002 was passed by the Registrar, Co-operative Societies, as would be evident from the copy of the notice annexed to the writ petition as Annexure-P/19. He submitted that, in fact, in response to the said notice, the Chief Executive Officer of the Co-operative Bank filed the objections/return and the contention of Mr. Shrivastava that the provisions of Second Proviso to Section 80 of the Act had not been complied with is therefore not correct. He further submitted that the grounds on which the impugned order dated 02/04/2004 has been passed by the Registrar, Co-operative Societies, is within the parameters of the power of review as contained in Section 80 of the Act and the submission of Mr. Shrivastava that the Registrar had exceeded his power of review as provided in Section 80 of the Act is misconceived.

14. The first question to be decided in these writ petitions is whether the Registrar, Co-operative Societies, could have invoked the provisions of Section 80 brought into the Act in the year 2003 by the Amendment Act of 2003 to review orders that were passed prior to the introduction of Section 80 by the Amendment Act of 2003. Sub-section (2) of Section 1 of the Chhattisgarh Co-operative Societies (Amendment) Act, 2003 by which the said Section 80 was introduced in the Act clearly provides that the aforesaid Amendment Act of 2003 was to come into force from the date of its publication in the official Gazette. The said Amendment Act of 2003 was published in the official Gazette on 9th of September, 2003. Hence, Section 80, which conferred a power of review on the Registrar, came into force w.e.f. 9th of September, 2003. The said Section 80 reads as follows:

> **"80. Review.-** The State Government or Registrar may, on its/his own motion, or on the application of any party interested, review its/his own order in any case and pass such order in reference thereto as it/he thinks just;
>
> Provided that, no such application made by the party interested shall be entertained, nor such a case be taken suo-motu, unless the State Government or Registrar is satisfied that there has been the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made, or that there has been mistake or error apparent on the face of the record, or there is any other sufficient reason;
>
> Provided that no such order shall be varied, amended or revised, unless notice has been given to the parties interested to appear and such interested parties have been heard:
>
> Provided further that application for review of any order, by the parties interested shall not be entertained, unless the application is filed within ninety days from the passing of the order."

Thus, by the aforesaid Section 80, the Registrar, Co-operative Societies, has been given the power to review his own order in any case as he thinks fit either on his own motion or on the application of any party interested and the Third Proviso to section 80 states that the application for review of any order by the parties interested shall not be entertained, unless the application is filed within 90 days from the passing of the orders, but there is no limitation provided in Section 80 of the Act with regard to the time within which the

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Registrar, Co-operative Societies may review any order passed by him on his own motion. Thus, after 9th of September, 2003, the Registrar, Co-operative Societies, in exercise of his said power under Section 80 brought in by the Amending Act of 2003, could review any order passed by him on his own motion except an order which had become final. In this case the order dated 22/10/2002 passed by the Joint Registrar and the order dated 25/11/2002 passed by the Registrar could not be said to be final for two reasons; firstly, because the said orders were subject to challenge before the Tribunal and Section 77 (16) expressly stated that it is the order passed by the Tribunal that would be final; secondly, because in fact, the orders dated 22/10/2002 and 25/11/2002 were under challenge before the High Court in W.P. Nos.2107 of 2002, 2162 of 2003, 2731 of 2002 and 2147 of 2002 filed by respondents No.3 to 6. The decision of the Supreme Court in **Keshavlal Jethalal Shah(Supra)** and the decision of the Madhya Pradesh High Court in **Rameshwar Nath Agrawal (Supra)** in which the concerned orders had become final do not apply to the facts of this case. The first submission of Mr. Shrivastava that the Registrar, Cooperative Societies could not invoke Section 80 of the Act introduced by the Amendment Act of 2003 to review the order dated 25.11.2002, therefore, has no merit.

15. The next question, which arises for decision in these writ petitions, is whether the Registrar, Cooperative Societies, exceeded his power of review under Section 80 of the Act in deciding afresh an issue which was decided by the Tribunal. In the present case, the impugned order dated 02/04/2004 has been passed by the Registrar, Co-operative Societies, reviewing the orders dated 22/10/2002 on the ground that on 08/05/2000 the Board of Directors of the Co-operative Bank under the Chairmanship of the Deputy Registrar, Co-operative Societies, Raipur had considered the charges described in the show cause notice and had finally decided to acquit respondents 3, 4, 5 and 6 of the charges and hence the Joint Registrar should not have issued another show cause notice under Section 53-B(2) and passed the final order dated 22/10/2002. The relevant paragraphs from the English translation of the said impugned order dated 02/04/2004 of the Registrar, Co-operative Societies in Hindi are quoted herein below:

> "The documents available in this regard are perused that the meeting of Board of Directors of Jila Sahkari Kendriya Bank Maryadit Raipur which held on 08.05.2000 under the chairmanship of Deputy Registrar Co-operative Societies, Raipur in pursuance of

order dated 04.04.2000 of Hon'ble Co-operative Tribunal in Revision Case No.93/99, therein considering all the charges, the Board of Directors of Bank, acquitted Shri Radheshyam Sharma, Deputy Chairman, Shri Mahendra Bahadur Singh, Member Shri Dharmdas Mahilang and member Shri Bhuvneshwar Yadu with majority from the charges in the notice issued by the Joint Registrar, Raipur and decided to file the case. When Board of Directors of Bank after considering charges described in the show cause notice finally decided to acquit from charges then on that basis only, the case should have been closed. Since the Board of Directors, conducted the procedure completely in accordance with order of the Hon'ble Co-operative Tribunal and as per the notice by Joint Registrar under Section 53 B/Kh(1), therefore, there was no propriety of next notice under section 53 B/Kh (2) and final order 04 of the base of the Act.

Holding Shri Mahendra Bahadur Singh, Shri Dharamdas Mahilang, Shri Bhuneshwar Yadu, non-applicants, Joint Registrar, in his final order dated 22-10-2002, did not punish them, but in revision case no. 80-A® 2002 vide order dated 25-11-2002 the then Registrar ordered to punish acquitted persons. According to the principle of natural justice the persons who are firstly acquittal by any court cannot be held guilty and punished in subsequent order punishment given to guilty person can be commuted, but the order to punish acquitted person or order to enhance punishment cannot be given. On this basis also, the firstly the order was passed by the Joint Registrar on 22-10-2002 acquitting aforesaid all the three persons and not punishing them which was changed by the then Registrar vide his order dtd. 25-11-2002 by publishing aforesaid three persons, and that is liable to be dismissed being not in accordance with law.

Therefore, on the basis of aforesaid appreciation the order passed by Registrar, Co-operative Societies, Chhattisgarh in Revision case No. 80A/K® 2002 on 25-11-2002, being & illegal and outside the jurisdiction is hereby dismissed.

In the revision case, the order passed by the Joint Registrar on 22-10-2002 was not properly appreciated. After giving notice under Section 53B/Kh(1) in pursuance of order given by Hon'ble Co-operative Tribunal when committee accomplished proceeding, then there arises no question of direct proceeding under Section 53 B/Kh (2). In doing such, the Joint Registrar has committed grave

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error interpreting the Act. Due to these reasons, the order passed by Joint Registrar, Co-operative Societies under Section 53B/Kh(2) of Chhattisgarh Co-operative Society Act on 22-10-2002 is quashed. The condition existing before the passing of impugned order dated 22-10-2002 shall be applicable."

What the Registrar has failed to appreciate while passing the aforesaid impugned order dated 02/04/2002 is that this very ground that on 08/05/2000 the Board of Directors of the Co-operative Bank had considered the charges in the show cause notice and had finally exonerated respondents 3, 4, 5 and 6 of the charges and the Joint Registrar could not have issued another show cause notice under Section 53-B(2) passed the final order had been considered and rejected by the Tribunal in its order dated 28/11/2001 in Revision Nos.176/2001, 177/2001, 226/2001 and 227/2001. Paragraphs 11, 12, 13, 14, 15 and 16 from the English Translation of the order of the Tribunal dated 28/11/2001 in Hindi in Revision Nos. Nos.176/2001, 177/2001, 226/2001 and 227/2001 are quoted herein below: -

"(11) Thus, the contention of the petitioner can not also be accepted that the managing committee of the society in its meeting dated 8-5-2000 has already considered and examined the charges against the staff sub committee and after due deliberation the motion was dropped and the committee members have not been found guilty of that charges. In the light of this decision now the Joint Registrar is not competent to issue fresh notice under sub section (2) of Section 53 of the Act. His jurisdiction starts only if the society has failed to take action. But the present is not the case here. The society has already taken action against the petitioner.

(12) Now the question which crops up is what is the correct meaning of words "on the failure of the society to take action" under Section 53 B of the act. As per the scheme and under lying principle of Section 53 B (1) of the Act, the correct meaning of the phraseology "on the failure of the society to take action" does not mean on the failure of the society to remove the officer concerned. The result of taking action may or may not be removal. Only requirement of sub-section (2) Section 53 of the Act is that the Registrar before passing any order in the matter, has to give an opportunity of hearing to the officer concerned. There after he may pass an order of removal and also disqualify the concerned officer.

(13) This question has been considered and examined by this Tribunal in Revision No. 68/2000 **(Shri Ramesh Saxena and two others V/s Joint Registrar, Cooperative Societies, Bhopal and one another) dated 23-02-2004.** In this revision the above similar question was raised before this Tribunal. In this order, in Para 8 it was as under:-

(14) Accordingly, the Registrar under sub-section 2 of this section gets jurisdiction to remove any officer of the cooperative society, on the failure of the society to take action against any officer of the society, as was directed by the Registrar. The society, who is called upon by the Registrar to take action against any officer under sub-section (1), is free to take its own decision after affording opportunity of being heard. Where the society fails to take action in that situation sub section (2) empowers the Registrar to take action against the concerned officer in the manner indicate therein. The words" on the failure of the society to take action" does not mean "on the failure of the society to remove the officer concerned". The result of taking action may be or may not be removal. Only requirement of sub-section (2) of Section 53 B is that the Registrar before passing any order in the matter, has to given an opportunity of hearing to the officer concerned. There after he may pass an order of removal and also disqualify the concerned officer.

(15) In para 14 of that order it was further observed as under:

"But while disagreeing with the decision of the committee of this society the Registrar is not required to record his reasons in writing. It is only his subjective satisfaction that any officer of the society should be removed on the basis of the material placed before him and if the charges mentioned under Section 53 B(1) of the Act are made out. It is just likely that an unscrupulous person may win over the members of the committee in his favour and for this reason the Registrar has been conferred with these powers. As has been observed by the High Court in a case reported in **(Brij Gopal Danga and others V/s State of Madhya Pradesh and another) 1979 MPLJ 965** that the cooperation is a great moral movement and provides as an obstitute for material assets, honesty and sense of moral obligation and keeps in view the moral rather than the material sanction. The power of expulsion of a member, whether exercised by the members of the society, is a power to preserve the moral base of a cooperative society. It appears that the Legislature thought it would not be enough to authorize expulsion of a member by the committee of the society

alone and the Registrar should also have the power to expel a member, for a majority in the committee may be won over by an unscrupulous member by using unfair means. We cannot lose sight of the fact that our laws are made by the elected representatives of the people and that there is a strong presumption that they are consistent with the moral norms of the society.

(16) Above referred case of the High Court is of course under Section 19 C of the Act, but the principle of law laid down in this case relating to the powers of the Registrar for removal of a member is of universal application and its ration will apply to the case falling under Section 53 B (1) & (2) of the Act.

Once the Tribunal had considered the aforesaid ground and rejected the same, the Registrar, Co-operative Societies, could not possibly review the order dated 22/10/2002 contrary to the decision of the Tribunal because the Registrar, Co-operative Societies, can in exercise of his power under Section 80 of the Act review his own order and correct any mistakes or errors in the said order as are apparent on the face of the record but cannot review an order passed by the Tribunal. The impugned order dated 02/04/2004 passed by the Registrar, Co-operative Societies was thus liable to be quashed on this ground.

16. In view of our aforesaid conclusion, it is not necessary for us to deal with the contention of the petitioners that no notice in terms of Second Proviso to Section 80 of the Act had been served on the petitioners and no opportunity of hearing was given to the petitioners before the impugned order dated 02/04/2004 passed by the Registrar, Co-operative Societies.

17. The impugned order dated 02/04/2004 passed by the Registrar, Co-operative Societies in Review case No.80-01/04 is accordingly quashed and the writ petitions are allowed, but considering the peculiar facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Brajesh*